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ABSTRACT

This brief discusses a variety of topics concerning the funding of K-12 education in the state of Oregon, specifically since the primary funding responsibility of schools has shifted from local school districts to the state. This has caused legislators to examine what they are getting for their money and how funding can be controlled. Court rulings citing unconstitutional school funding systems, voter-approved initiatives, and a shift to state standards and assessments have brought school-finance issues to the forefront. A central problem is how to balance state goals and standards, while recognizing the value of local discretion in school decision making. Initial national lawsuits revolved around the "equity" question: Did students in the state receive a comparably fair and equitable education? Traditionally, there was a heavy reliance on property taxes, and the inherent inequity of property-rich districts and poor districts meant that schools were being funded unequally. The per-pupil funding level has generally been the approach used by the courts for comparison purposes. Equity issues have now given way to "adequacy" issues, and states have also begun to ask what are they getting for their money. (Contains 30 endnotes.) (DFR)

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ISSUE BRIEF

Legislative Policy, Research, and Committee Services • 453 State Capitol • Salem, OR 97310-4002 • 503-986-1813

Jan McComb, Committee Administrator

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Greater State Involvement in K-12 Education

How much money should the state allocate to educate its children? What should that education look like? What level of student achievement should the state expect from its investment? Are school districts spending their money wisely?

Since passage of Ballot Measure 5 in 1991, primary funding responsibility of schools has shifted from local school districts to the state. As more state dollars are used to fund education, legislators want to see what they are getting for their dollars, and consequently, are becoming more interested in controlling how those dollars are spent.

In addition, court rulings citing unconstitutional school funding systems, voter-approved initiatives, and a shift to state standards and assessments have brought school finance issues front and center of many states' legislative agendas. By the end of 1999, only five states had not experienced school funding litigation. Forty-three suits are currently pending.[1]

A central problem is how to balance state goals and standards, while recognizing the value of local discretion in school decision making. It is difficult for a state to impose equitable spending patterns while also embracing the concept of local autonomy. So far, local districts have been able to retain control over how they spend the money the state gives them. This control comes under attack each legislative session, however, with various proposals that run the gamut of requiring certain subjects be taught to controlling how districts pay their teachers.

Education Equity Issues Nationally

Initial national lawsuits revolved around the "equity" question: Do students, statewide, receive a comparably fair and equitable education? The heavy reliance on property taxes and the inherent inequity of property-rich districts and poor districts meant that schools were being funded unequally. While there may be other measures of equity, the per-pupil funding level has generally been the approach used by the courts for comparison purposes, except when states can rationalize spending differing amounts, such as for students who require more resources to educate.

Equity Issues in Oregon

Oregon's school funding ystem has been challenged based on funding inequities. In each case Oregon appellate courts have upheld Oregon's school funding system and have consistently rejected plaintiff's arguments that Oregon's school funding system violates the Oregon and United States Constitutions.

In 1976, plaintiffs argued that Oregon's funding system violated Article VIII, section 3 of the Oregon Constitution, which states that, "(t)he Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools."[2] The Oregon Supreme Court rejected this argument, holding that the state satisfies its obligation if it requires and provides for a minimum of educational opportunities in local school districts and permits the districts to exercise local control over what they desire, and can furnish, over the minimum.[3]

In 1991, the same constitutional provision was the basis for a second challenge of the state's funding system.[4] In this case, plaintiffs argued that this constitutional provision requires the state to provide sufficient funds, without reliance on property tax revenues, to satisfy all state educational requirements. The plaintiffs cited financial disparities between districts with high assessed property values and relatively low taxes and poor districts that must levy high taxes to raise the same amount of money. The court upheld the school funding system, holding that the "safety net" amendment (Article XI, section 11a) "explicitly directs school districts to meet state standards with property taxes."[5] The court further stated "the constitution

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thus recognizes that school districts may have disparate amounts to fund public schools, depending on the amount that voters are willing to pay."[6]

In 1995, plaintiffs in *Withers v. State of Oregon*[7] argued that while the school funding formula was fair and equitable, the state had unconstitutionally failed to implement the formula, due to a policy decision by the legislature to phase-in its plan to equalize per-pupil spending. The plaintiffs argued that this resulted in a denial of educational opportunities that violated both the Oregon and U.S. Constitutions. The Oregon Court of Appeals rejected this argument and upheld Oregon's current school funding system. The court found that there was a rational basis for the implementation plan, that of balancing the need to avoid harm to students in school districts that historically received higher levels of total funding against funding equalization to benefit students in other districts.[8]

In 1999, the plaintiffs of the *Withers* case again challenged the constitutionality of phasing in equitable funding of secondary schools for 1995 to 1997. *Withers v. State*, 163 Or. App. 298 (1999). The court once again upheld Oregon's school funding system.

The 1999 legislature passed HB 2753 (chapter 1094, Oregon Laws 1999) which allows local school districts to impose additional taxes for schools, if approved by voters. This "local option" was enacted pursuant to section 11(4)(a)(B), Article XI of the Oregon Constitution. It is believed by many that because this additional money is capped at approximately $500 per student it will not incur litigation based on the inequities it will create.

Education Adequacy Issues

Even if a distribution formula is equitable, it can still be inadequate. Equity issues have now given way to "adequacy" issues. Faced with funding more of school budgets with state general funds, states have also begun to ask what are they getting for their money. Essentially, an adequacy approach asks, what do we want students to know, and how much does that cost?

Adequacy is emerging as a basis for the establishment and evaluation of state school finance systems as the result of the two major forces. First, the emphasis on standards-based reforms is focusing attention on student learning. Second, policymakers and taxpayers are demanding more accountability of public funding for education.

While the approach may vary, states have begun to define the elements of a proper education, define an "adequate" education, and determine what such an education would cost.

In *Educational Adequacy: Building an Adequate School Finance System*,[9] "adequacy" is defined as a state school finance system that provides and ensures the use of sufficient funds necessary to develop and maintain the needed capacity to provide every student a reasonable opportunity to accomplish clearly articulated and measurable educational objectives. Recommended are five steps that policy makers use to build an adequate school finance system.

First, *provide clear and measurable educational goals or objectives expected of students as the basis for an adequate school finance system*. Oregon law specifies the goals of K-12 education[10] as well as school characteristics.[11] The State Board of Education quantifies those goals with statewide academic standards.

Second, *identify those conditions and tools (capacity) that enable schools to provide every student a reasonable opportunity to achieve expected education goals or objectives*. Several attempts have been made to do this, the most recent are the components, elements, and prototype schools specified in the Oregon Quality Education Model (OQEM). The OQEM goes further, however, and replaces "reasonable opportunity" with 90 percent of students at each school meeting state standards.

Third, *ensure that sufficient funding is provided to establish and maintain the identified capacity that is essential for schools to provide every student a reasonable opportunity to achieve expected educational goals or objectives*. Again, the OQEM estimates total costs for a system that contains its "tools," excluding capital construction and transportation costs.

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Fourth, *identify and provide sufficient funding for state-level capacity that is necessary to support the establishment and maintenance in all schools of the conditions and tools that are identified as effective and essential to student learning.* Both the Governor, through his Quality Education Commission and the legislature, through its interim committees, are reviewing the OQEM and the $5.65 identified as the funding needed in the 1999-01 biennium to implement it.

Finally, *establish a system of accountability measures that will provide students with (1) comprehensive, accurate, and timely information concerning the use of all public funds for the public education system; (2) the status in every school of those conditions and tools determined to be effective and essential for student learning, and (3) the performance of students relative to expected educational goals or objectives.* Oregon has implemented a number of accountability measures. The "Database Initiative Project" tracks how schools spend their appropriated funds.[12] The *Oregon Report Card* assesses schools' progress toward achieving state goals.[13] Individual schools issue report cards that communicate a school's characteristics and student achievement levels.[14] Statewide assessments measure students' academic performance.[15]

Adequacy Litigation

Adequacy issues in education finance litigation appear to be growing in importance. What constitutes an "adequate" education? The shift from equity to adequacy is being driven by an emerging consensus that high minimum outcomes should be the orienting goal of both education policy and finance.

Plaintiffs in lawsuits over the adequacy issue have highlighted an inability to update texts, hire teachers with advanced degrees, offer advanced classes, purchase school buses, offer equal special education programs as compared with other school districts, etc., when arguing that their school district was unable to deliver an adequate education.[16]

The State of New York is being sued by a group that argues that children in poor rural and inner-city school districts who attend over-crowded schools with inadequate supplies and inexperienced, uncertified teachers are not receiving the "sound, basic education" guaranteed by the state constitution and that by developing education standards, those standards must be funded such that students may reach them.[17]

An Alabama circuit court found "the evidence is compelling that many Alabama schools fall below standards of minimal educational adequacy for facilities, curriculum, staffing, textbooks, supplies and equipment, and transportation."[18]

Following a 1995 ruling that the state's school funding system was unconstitutional, the legislature developed a funding formula that was challenged in 1999. In response, the Wyoming Supreme Court laid out three specific actions the legislature must take in constructing a new finance system:

- The legislature must identify the "proper" educational package each Wyoming student is entitled to have;
- The cost of that educational package must be determined; and
- The legislature must take necessary action to fund that package.[19]

Paying for an Adequate Education

Over the years, state policy makers have struggled with how much should be spent on education. This immediately raises the issue of what does an adequate or "core" education cost.

In addition, policymakers are trying to determine what the state should pay for, what should be left to local school districts, and what adjustments should be made for high-cost students and unusual district conditions.

The emergence of high, performance-based academic standards has shifted the focus from providing certain inputs (class size, library resources, instructional time) to determining what resources are necessary for students to reach their academic potential.

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Some states are exploring ways to identify "ideal" spending ranges and efficient practices for certain activities, and then providing incentives for districts to spend within this range. One goal of this process is to save money on non-instruction services in order to direct more dollars to teaching and learning.[20]

Previous Attempts to Determine Education Costs in Oregon

"Boyd Applegarth" Study (1990)

Initiated by the 1987-88 Governor's Commission on School Funding Reform and passage of HB 2132,[21] the study attempted to develop a definition of a "standard education"[22] that would be available to every Oregon student and develop financial data that would support it.

This effort determined that a standard education was comprised of the following:

- Common curriculum goals
- Vocational-Technical education
- Education programs mandated by state or federal law and selected other state requirements presently constituted
- Character education
- Student activities
- International understanding
- Support services necessary to provide a standard education for Oregon students

"Common curriculum goals" included English, mathematics, health, science, physical education, social studies, music, art, personal finance, second languages, and career education.

An attempt to develop a price tag was made using sample school districts' current expenditures and adding student activities and education service district costs. The study suggested $4,164 per student. At that time the state picked up an average of 29 percent of school funding ($600 million), it was estimated that a statewide standard education program would cost in excess of $2 billion a year.

21st Century Schools Act (1991)

HB 3565,[23] encompassing the school reform act known as the 21st Century Schools Act, is notable in that it was *not* an attempt to cost out education, specifically the systemic changes required under the Act.

The bill stated, "nothing in this chapter is intended to be mandated without adequate funding support. Therefore, those features of this chapter which require significant additional funds shall not be implemented statewide until funding is available."[24] It was the belief of then-Superintendent Norma Paulus that many of the reforms could be implemented without additional funds, and little attempt was made to determine reform costs. Despite the lack of additional state dollars, districts throughout the state began implementation. The Department of Education was appropriated $2 million to assist it in implementing the bill's provisions.[25]

Governor's Quality Education Task Force (1996)

In May 1996, Governor Kitzhaber convened a task force to "define the educational system's financial requirements to meet the standards for a quality education as specified in the Oregon Education Act for the 21st Century" and to "analyze the current financial information systems used by primary and secondary education to determine what changes are necessary to link state financing to student performance."[26] A technical work group comprised of state budget and revenue analysts, Department of Education financial systems experts, private sector accountants, and experts in managing school district financial systems was also created. After working concurrently with then-Speaker Lundquist's committee (*see Speaker's Council on Education Funding*, below), this committee ceased meeting and deferred to that entity.

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Governor Kitzhaber's Study Proposal (1997)

On March 17, 1997, Governor Kitzhaber told the House Education Committee that a two-year, $3 million study would help the next legislature make better decisions about school funding. He proposed surveying as many as 25 school districts to discover what education techniques would boost student performance and at what cost. The Governor envisioned a group of five to seven people collecting accounting data from 15 to 25 school districts, looking at the education characteristics in those districts and then correlating them with measurements of student performance.[27] This proposal was not funded. Then-Speaker Lundquist stated through his chief of staff Margie Hunt that he wanted his own study because the legislature is the state entity that actually sets the education budget.[28]

Speaker's Council on Education Funding (1997)

Created in March 1997 then-Speaker Lundquist's chief of staff Margie Hunt stated that the council would be made up of parents, teachers, business leaders, and educators. The Council would look at cost accounting, local options for school funding, and the creation of a rainy day fund for schools in periods of economic downturn. It would also develop a model that established the requirements and cost of a basic high quality education.[29] This entity was renamed the Legislative Council on the Quality Education Model and produced the Oregon Quality Education Model.

Quality Education Commission (1999)

The commission was created by Governor Kitzhaber and Superintendent of Public Instruction Stan Bunn in November 1999. Its mission was to identify key issues to address in further validating and refining the Quality Education Model; solicit input from educators, education policy experts and others about the elements of the model; solicit public input regarding educational priorities for use in developing the model; make recommendations regarding model development based on research, data, public input and experience; and communicate with stakeholders regarding model development.[30] An important charge of this commission was to review cost elements and components of the prototype schools to determine any omissions or needed revisions. A final report is scheduled for late September 2000.

Endnotes

[1] Whitney, Terry, *State School Finance Litigation: 1999 Summary and Analysis*, State Legislative Report, National Council of State Legislatures, vol. 24, No. 8, December 1999.
[2] *Olsen v. State ex rel. Johnson*, 276 Or. 9, 26 (1976).
[3] *See Olsen*, 276 Or. at 27.
[4] *Coalition for Equitable School Funding v. State of Oregon*, 311 Or 300 (1991)
[5] *Coalition*, 311 Or. at 300, 309.
[6] *Coalition*, 311 Or. at 310.
[7] *Withers v. State of Oregon*, 133 Or. App. (1995).
[8] Id. at 387 (1995).
[9] *Educational Adequacy: Building an Adequate School Finance System*, National Conference of State Legislatures, July 1998.
[10] ORS 329.015.
[11] ORS 329.025.
[12] ORS 327.511.
[13] ORS 329.115.
[14] ORS 329.105.
[15] ORS 329.485.
[16] Wood, R. Craig. *Adequacy Issues in Recent Education Finance Litigation*, National Center for Education Statistics, July, 1993.

[17] *Reforming School Funding*, Congressional Quarterly Inc. Dec. 10, 1999, vol. 9, no. 46.
[18] *Alabama Coalition for Equity v. Hunt*, CV-90-883-R, Montgomery Circuit Court, March 31, 1993.
[19] Whitney, Terry N., *State School Finance Litigation: 1999 Summary and Analysis*, State Legislative Report, Vol. 24, No. 8, December 1999.
[20] *Determining the Cost of a Basic or Core Education*, Education Commission for the States, 1999. http://www.ecs.org/ecs/ecsweb.nsf/3...bfc78287256751007731f8a?
[21] HB 2132 directed the Oregon Department of Education to "define by rule a basic education program to be available to all elementary and secondary students in the public schools in this state."
[22] "Basic education" was perceived as being too narrow. *Defining a Standard Education for Oregon Students*, Department of Education, Spring, 1990.
[23] Chapter 693, Oregon Laws, 1991.
[24] ORS 329.065.
[25] Joint Committee on Ways and Means, 66th Legislative Assembly, Budget Report, Department of Education.
[26] Kitzhaber, Governor John, News Release, May 1, 1996.
[27] Carter, Steven & Bill Graves, *Kitzhaber Calls for $3 Million School Study*, The Oregonian, March 20, 1997, p. D01.
[28] Ibid.
[29] Ibid.
[30] Kitzhaber, Governor John, Press Release, November 8, 1999. http://www.governor.state.or.us/governor/press/p991108.htm